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HIGH TECH BROADBAND COALITION



December 8, 2004

The Honorable Michael K. Powell
Chairman of the Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Unbundled Access to Network Elements (WC-04-313)

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier (CC-01-338)

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC-96-98)

Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC-98-147)

Dear Chairman Powell:

The High Tech Broadband Coalition ("HTBC" or "Coalition") represents the leading trade associations of the computer, telecommunications equipment, semiconductor, consumer electronic, software, and manufacturing sectors and seeks to promote regulatory policies conducive to the rapid and ubiquitous deployment of affordable and fast broadband services. In particular in the Triennial Review proceeding, HTBC has urged the Federal Communications Commission to draw a clear and sound demarcation between the incumbent telephone company's legacy facilities, which are subject to some unbundling where there is demonstrated impairment, and its packet switching, packetized transmission capabilities of hybrid loops, and fiber to the premises loops ("FTTP").¹ The Coalition has applauded the FCC's Triennial Review and subsequent decisions encouraging more investment in broadband facilities and

¹ See, Letter from High Tech Broadband Coalition to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Jan. 28, 2003.

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recommended additional important steps that the Commission could take to spur broadband rollout.² Recent announcements and investments by telephone companies demonstrate that the Commission's forward-looking decisions are already proving to be successful.³

HTBC has consistently maintained that incumbent telephone companies should not have to unbundle the packetized transmission capabilities in hybrid loops and FTTP loops (including dark fiber) and attached equipment used to transmit packetized information. At the same time, the Coalition maintained that competitive telephone companies should continue to have regulated access to existing non-packet loop capabilities over hybrid fiber/copper loop facilities where there is demonstrated impairment. In that way competitors would, subject to the impairment test, continue to have access to existing non-packet voice and data capabilities including DS-1s provided over TDM fiber facilities.⁴

In the Commission's Triennial Review Order, it created a policy drawing a bright line between "old" and "new" investment in network architectures and using such a division to articulate its unbundling requirements. Specifically, the Commission determined that such a line is best drawn based on technological boundaries rather than transmission speeds, bandwidth or some other factor. The Commission made this distinction based on packet-switched equipment versus TDM-based equipment.⁵

The Coalition urges the Commission to reaffirm in the ongoing proceeding that incumbent telephone companies are not required to unbundle packet switching and the packetized transmission capabilities of hybrid loops, and FTTP loops. The Commission was correct to make this distinction in February 2003, succeeded in having this part of the order upheld before the D.C. Circuit,⁶ and effectuated a policy that has resulted in increased investment in the broadband marketplace. Any step backward from this bright line distinction would undermine the significant progress that has been made to encourage deployment.

² See, Letters from High Tech Broadband Coalition to The Honorable Michael K. Powell dated May 6, 2004 and October 25, 2004.

³ See, "SBC Communications to Rapidly Accelerate Fiber Network Deployment in Wake of FCC Broadband Rulings", Oct. 14, 2004, available at: <http://www.sbc.com/gen/press-room>. See also "Verizon Deploying Fiber Optics to Homes and Businesses in 6 More States in Northeast and Mid-Atlantic," Oct. 21, 2004, available at: <http://newscenter.verizon.com/proactive/newsroom/release.vtml>.

⁴ See, Letter from HTBC to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Jan. 28, 2003.

⁵ TRO ¶293. In addition, the Commission ordered that incumbent LECs provide to competitive LECs non-packetized high capacity capabilities, imposed a nondiscrimination requirement in furnishing such capabilities, proscribed actions that would disrupt or degrade access to TDM-based features, functions, and capabilities of hybrid loops, and required that incumbents comply with network notification requirements and any applicable state law when copper loop is retired. TRO ¶294.

⁶ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

The Coalition applauds your past and present leadership in reforming FCC rules to make new and advanced broadband technologies available to all consumers. HTBC looks forward to continuing to work with the Commission to achieve these important goals.

Very truly yours,

BUSINESS SOFTWARE ALLIANCE

By: /s/ Robert Holleyman
Robert Holleyman
President and CEO

NATIONAL ASSOCIATION OF
MANUFACTURERS

By: /s/ John Engler
John Engler
President and CEO

CONSUMER ELECTRONICS ASSOCIATION

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cc:

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Commissioner Michael J. Copps
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